IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 249 OF 1997

1. Rajaram Haridas Kadam
2. Shamrao Appa Lokhande
3. Vaijnath Yeshwant Rokade
4. Haridas Bapu Kadam
5. Eknath Baji Kadam
6. Bhimrao Appa Lokhande
7. Baban Ananda Karpe
8. Uttam Sopan Kadam
9. Suresh Eknath Kadam
10. Hanumant Haridas Kadam
11. Digamber Govind Kadam
12. Narayan Ramchandra Kadam
13. Govardhan Yeshwant Rokade
All R/o Ropale, Tal.
Pandharpur, Dist.Solapur. ..Applicants

Vs.

The State of Maharashtra ..Respondent

Mr. R.S. Kate for applicants.
Ms. M.H. Mhatre, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : January 23 & 29, 2007.

ORAL JUDGMENT:

1. All these applicants faced trial in Regular Criminal Case No. 214 of 1985 for the offences

punishable under Sections 147, 148, 149, 326, 323, 504 read with Section 34 of IPC and the learned JMFC at Pandharpur was pleased to convict them for the offences punishable under Sections 147, 148, 326, 323 read with Section 149 of IPC and they were acquitted from the offences punishable under Section 504 of IPC. They were sentenced to suffer SI for a period varying from one day to three months and also to pay fine. This order of conviction and sentence came to be challenged in Criminal Appeal No.12 of 1992 which was dismissed by the learned Additional Sessions Judge at Pandharpur on 20/10/1997. Hence, this criminal revision application.

2. The incident had taken place on 18/11/1985 at about 8.30 a.m. when P.W.3 Govardhan Patil while returning from his agricultural land on his way to the house and while he reached the grocery shop of Ramchandra Kamble, all the accused went to him and they were armed with weapons like iron rod, stick, axe and chain etc. Apprehending assault from the accused, Govardhan started running and he rushed into the shop

of Ramchandra Kamble. Accused Eknath Kadam caught hold of Govardhan and dragged him out of the shop and other accused started assaulting him with the weapons in their hands. As a result, he became unconscious and Shrirang Vasudeo Kadam (PW 1) and other witnesses like Raghunath (PW 4), Sandipan (PW 5) went to the spot and took Govardhan to the hospital at Pandharpur. He was treated and his statement came to be recorded, on the basis of which C.R. No.138 of 1985 came to be registered. During the course of investigation the accused came to be arrested and charge-sheet came to be filed on 26/11/1985.

3. The prosecution examined in all 10 witnesses and PW 9 Dr. Subhash Lambtura was the Medical Officer who had admitted Govardhan and issued the medical certificate. PW 7 Digamber Karande and PW 10 Shivaji Hulge were the police personnel. PW 2 Pandurang Pawar was the panch witness and PW 1 Shrirang Kadam, PW 4 Raghunath, PW 5 Sandipan and PW 8 Shaker Patil were claimed to be the eye witnesses to the incident. On assessment of the oral and documentary evidence, the

trial court recorded a finding that the accused were the members of an unlawful assembly with a common object to assault PW 3 Govardhan Patil on 18/11/1985 at about 8.30 a.m. near Ramchandra Kamble's shop at village Ropale, Taluka Pandharpur and in prosecution of the common object of such unlawful assembly the accused committed an offence of rioting with deadly weapons and caused grievous hurt on the person of Govardhan Patil by means of weapons and the attack on Govardhan Patil was intentional. The learned Additional Sessions Judge, on reappreciation of the evidence of PW 1, PW 3, PW 4, PW 5 read with the evidence of PW 9 was pleased to confirm the findings recorded by the trial court and consequently the Lower Appellate Court did not find any reason to interfere with the order of sentence though it recorded its view that the sentence awarded by the trial court was not adequate. While admitting this revision application the applicants were directed to be released on the same bail as in the trial court on furnishing fresh bonds and, therefore, they are on bail as of now.

4. The case of the prosecution is based on the testimony of four eye witnesses i.e. Shrirang Kadam (PW 1), Govardhan Patil (PW 3), the injured victim, Raghunath (PW 4) and Sandipan (PW 5). PW 8 Shankar Patil is the brother of the victim Govardhan Patil but his testimony has been discarded by both the courts below as admittedly he appeared on the scene of offence when Govardhan Patil was already assaulted and he was lying on the ground on account of giddiness. The evidence of PW 9 Medical Officer has been accepted regarding the injury sustained by PW 3 Govardhan Patil. PW 7 Digamber Gopal Karande has proved Exh.84 the seizure panchanama of clothes, Exh.85 the seizure panchanama of wooden stick and Exh.86 the seizure panchanama of iron rod. Having regards to the oral evidence of PW 1 and PW 3, as considered by both the courts below, it is clear that the accused were the members of the unlawful assembly and duly armed with weapons like stick, iron rods and sticks etc. on 18/11/1985 at about 8.30 a.m. at village Ropale, Taluka Pandharpur, Dist. Solapur. The victim Govardhan Patil was on his way to the grocery shop of Ramchandra Kamble. The accused had come near the shop

of Narayan Kadam and were holding arms like iron rods, wooden stick, chain, axe and sickle etc. Village Panchayat elections had taken place few months back and on account of election there was rivalry between accused and the group of victim. The accused belong to the group of Haridas Kadam, whereas the complainant and the injured belong to the group of Shivaji Patil. When the injured victim saw the accused with arms in their hands, he apprehended danger to his life and, therefore, started running to the shop of Ramchandra Kamble. The accused chased him and when Govardhan, the victim, entered in the same shop, Digambar Kadam (accused no.11) caught hold of him and dragged him out of the shop and thereafter Govardhan was assaulted. This evidence of the trial court has been duly considered by the Lower Appellate Court on the issue of unlawful assembly within the meaning of Sections 141 and 142 of IPC.

5. The Medical Certificate issued by PW 9 has certified the following injuries sustained by Govardhan :-

(a) Incised wound 3 inch x 5 inch left partital area, nature of injury simple, age of injury simple, age of injury within 24 hours, nature of weapon sharp cutting object.

(b) Contusion 7 x 8 cm. occo nature of injury simple within 24 hours.

(c) Contusionfront of head 5 x 2 inch simple nature.

(d) Abrasion and contusion left leg 2 x 2 simple within 24 hours caused by hard object.

(e) Abrasion and contusion left leg 3 x 5 cm simple within 24 hours caused by hard object.

(f) Contusion at arm 12 x 5 inch simple within 24 hours caused by hard object.

(g) Contusion left forearm 13 x 1 cm simple within 24 hours caused by hard object.

(h) Contusion at arm 5 x 5 inch simple within 24 hours casued by hard object.

(i) Contusion back 20 x 8 cm simple within 24 hours caused by hard object.

(j) Contusion left back 2 x 1 simple within 24 hours caused by hard object.

(k) Contusion left arm 5 x 4 cm simple within 24 hours caused by hard object.

(l) Fracture lower 1/3 rd fibula 5 x 5 grievous nature of injury within 24 hours caused by hard object.

(m) Fracture sty laid process radium 3 x 3 grievous naure of injury within 24 hours caused by hard object.

. Injury Nos. 1 to 11 are simple injuries, whereas Injury Nos.12 and 13 are stated to be grievous nature and as per the doctor they were caused by hard object. The recovery of wooden stick and iron rod through the evidence of PW 7 has been proved from accused Rajaram Kadam (accused no.1) and that of iron rod from Digambar Kadam (accused no.11). The recovery of wooden stick allegedly used by Eknath Kadam (accused no.5) has not been proved. When there are 13 accused and held to be the members of the unlawful assembly on the basis of more than one witness's evidence, to decide the challenge to the findings recorded by the courts below, it will be necessary to refer to the law laid down in the case of Masalti and ors. vs. State of U.P. **[AIR 1965 SC 202]** and more particularly the following principles:-

(a) Besides, if a large crowd of persons armed with weapons assaults the intended victims, it may not be necessary that all of them have to take part in the actual assault.

(b) That where a criminal court has to deal with evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, it is usual to adopt the test that the conviction could be sustained only if it is supported by two or three or more witnesses who give a consistent account of the incident. In a sense, the test may be described as mechanical; but it is difficult to see how it can be treated as irrational or unreasonable.

(c) What is to be proved against a person who is alleged to be a member of an unlawful assembly is that he was one of the persons constituting the assembly and he entertained along with the other members of the assembly the common object as defined by Section 141 of IPC.

. Their Lordships further observed in the said case as under:-

"....In other words, an assembly of five or more persons actuated by, and entertaining one or more of the common objects specified by the five clauses of Section 141, is an unlawful assembly. The crucial question to determine in such a case is whether the assembly consisted of five or more persons and whether the said personal entertained one or more of the common object as specified by Section 141. While determining this question, it becomes relevant to consider whether the assembly consisted of some persons who were merely passive witnesses and had joined the assembly as a matter of idle curiosity without intending to entertain the common object of the assembly, otherwise, in law, it would not be correct to say that before a person is held to be a member of an unlawful assembly, it must be shown that had committed some illegal overt act or had been guilty of some illegal omission in pursuance of the common object of the assembly in fact...."

6. With the assistance of Shri Kate the learned counsel for the accused and Ms. Mhatre, the learned APP, the evidence of all these four witnesses i.e. PW 1, PW 3, PW 4 and PW 5 was sifted and a chart has been prepared by both of them and placed on record. It is clear that PW 1 and PW 3 have not assigned any specific act of assault on PW 3 by any of the accused, namely, accused no.3 Vaijnath Rokade, accused no.4 Haridas Kadam, accused no.7 Baban Karpe, accused no.8 Uttam Kadam, accused no.10 Hanumant Kadam, accused no.12 Narayan Kadam. In the case of accused no.2 Shamrao Appa Lokhande, PW 1 has stated that he assaulted Govardhan Patil with chappal and kick blows but this version has not been supported by any of the other three witnesses i.e. PW 3, the victim himself and PW 4 as well as PW 5. Similarly PW 1 stated that accused no.6 Bhimrao Lokhande assaulted Govardhan with chappal and kick blows, but this version has not been supported by any of the other three witnesses, namely, PW 3, PW 4 and PW 5. So far as accused no.9 is concerned, it is stated by all these four eye

witnesses that while he attempted to assault PW 3 Govardhan, the blow hit accused no.13 and there is nothing further attributed to him. Thus by applying the law laid down in Masalti's case (Supra), it is necessary to examine the case of remaining accused i.e. accused no. Rajaram Kadam, accused no.5 Eknath Kadam and accused no.11 Digambar Kadam. The version of PW 1 that accused no.1 Rajaram Kadam assaulted with stick to PW 3 is supported by PW 5 Sandipan Kadam. PW 1 stated that Eknath Kadam caught hold of PW 3 Govardhan and dragged him out of the shop of Ramchandra Kamble and assaulted with stick, whereas PW 3 and PW 4 have stated that accused no.5 Eknath Kadam pulled the victim PW 3 out of the shop of Ramchandra Kamble. Where as PW 5 Sandipan Kadam ha stated that the victim has pulled out of the shop and assaulted by Eknath Kadam. The prosecution has not been able to prove the recovery of the wooden stick allegedly used by Eknath Kadam and, therefore, the assault with stick becomes suspicious. However, the first part that the victim was dragged out of the shop of Kamble by accused no.5 Eknath Kadam stands proved through the testimony of all these four eye witnesses and thus his

participation in causing injuries by way of assault to Govardhan is proved.

7. In view of the evidence as adduced before the trial court and as analysed on the basis of the chart submitted by both the sides, it is clear that the order of conviction and sentence as passed by the learned JMFC at Pandharpur and confirmed by the learned Additional Sessions Judge at Pandharpur is required to be further modified.

8. In the result, the revision application succeeds partly. The conviction for the offences punishable under Sections 147 and 148 read with Section 149 of IPC of all the accused is hereby confirmed, however the order of sentence is modified and it is directed that they be undergo SI for 10 days. Accused Nos.2,3,4,6,7,8,9,10,12 and 13 are hereby acquitted for the offences punishable under Sections 323 and 326 read with Section 149 of IPC and consequently the order of sentence passed against them

for these offences stands set aside. Accused No.5 Eknath Baji Kadam found guilty for the offence punishable under Section 323 read with Section 149 of IPC and the sentence ordered against him by both the courts below is hereby confirmed. However, his conviction for an offence punishable under Section 326 read with Section 149 is hereby quashed and set aside. Accused No.1 Rajaram Kadam and accused no.11 Digambar Kadam have been rightly held to be guilty for the offences punishable under Sections 323 and 326 read with Section 149 of IPC. The order of sentence confirmed by the lower appellate court calls for no interference in respect of these two accused.

. All the sentences to run concurrently.

. The revision application is disposed off in terms of the above modifications.

. Accused Nos.1, 5 and 11 to surrender to undergo the sentence forthwith.

(B.H. Marlapalle,J.)